

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

(1) SAILOR MARIE DEMLER	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 19-CV-51-RAW
	)	
(1) BOBBY SMITH, and individual;	)	
(2) RICHERS TRUCKING INC., an Iowa,	)	
Corporation; and	)	
(3) NATIONAL INTERSTATE	)	
INSURANCE COMPANY, an Ohio	)	
Corporation,	)	
	)	
Defendants.	)	

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**NOTICE OF REMOVAL**

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TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE PARTIES  
AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, Pursuant to 28 U.S.C. §1441, Richers Trucking, Inc., (hereinafter “Defendant Richers”) hereby removes this action from the District Court of Wagoner County, State of Oklahoma, to the Federal District Court in the Eastern District of Oklahoma pursuant to 28 U.S. § 1332, 1441(a), and 1446. As grounds for removal, Defendant respectfully informs the Court of the following:

### **PROCEDURAL REQUIREMENTS**

1. Pursuant to 28 U.S.C. § 1446(d), the Defendant will serve written notice of the filing of this Notice of Removal upon Plaintiff and will file a copy of the Notice of Removal with the Clerk of the District Court in and for Wagoner County, State of Oklahoma.

2. Pursuant to LCvR 81.2, a copy of the State Court Action docket sheet and all documents filed in the State Court Action are attached as Exhibits 1-4. (See Ex. 1 – Wagoner County Court Docket Sheet; Ex. 2 – Plaintiff’s Petition; Exhibit 3 Summons; Exhibit 4 Affidavit and Return of Service by Certified Mail) There is no Scheduling Order in the State Court Action. There are no pending motions.

3. Plaintiff served Initial Discovery Requests with the Summons and Petition. However, service of discovery with the Summons and Petition is improper in both Oklahoma State (See 12 O.S. § 3233(A) and 3234(B)) and Federal Court (Rule 26(d)). Defendant contends these discovery requests need not be answered as they were improperly served.

### **BACKGROUND INFORMATION**

4. On January 14, 2019, Plaintiff filed her Petition in the District Court of Wagoner County, State of Oklahoma, with the case caption *Sailor Marie Demler vs. Bobby Smith, Richers Trucking, Inc., and National Interstate Insurance Company*, Case No. CJ-2019-10 (“state court action.”) See Exhibit 2, Plaintiffs’ Petition.

5. Plaintiff seeks damages in excess of \$75,000. *Id.*

6. The subject lawsuit involves a motor vehicle collision that occurred on November 18, 2018, on southbound US Highway 69 near the intersection of State Highway 51 in Wagoner, Wagoner County, State of Oklahoma. *Id.*

7. Upon information and belief Plaintiff is a resident of Wagoner County, Oklahoma. *Id.*

8. Defendant Bobby Smith is a resident of the State of Iowa. *Id.*

9. Defendant Richers Trucking is a foreign corporation incorporated in the State of Iowa with its principal place of business in the state of Iowa. *Id.*

10. Defendant National Interstate is a foreign corporation incorporated in the State of Ohio with its principal place of business in the state of Ohio. *Id.*

11. Defendant Richers was served with a copy of the Summons and Petition on January 28, 2019.

12. Defendant Smith has not yet been served.

13. Defendant National has not yet been served.

### **JURISDICTION**

14. This Court has removal jurisdiction over this lawsuit pursuant to 28 U.S. §§ 1441 and 1446 and based on diversity of citizenship between the Plaintiff and Defendants under 28 U.S.C. § 1332 and as alleged above.

15. Upon information and belief, as derived from Plaintiff's Petition, Plaintiff seeks an amount in excess of this Court's jurisdictional minimum of \$75,000.00, excluding interest and costs stated in 28 U.S.C. § 1332. See Exhibit 2.

16. Further, this Notice of Removal is timely filed with this Court, pursuant to 28 U.S.C. § 1446(b) and the Federal Courts Jurisdiction and Venue Clarification Act of 2011 ("JVCA"), because thirty (30) days since the last Defendant was served has not elapsed.

17. Additionally, pursuant to the same Federal Statute, one year has not elapsed since the commencement of this action.

18. Removal is being made to the proper Federal District Court. The pertinent language of 28 U.S.C. § 1446(a) provides that the Defendant shall file the Notice of Removal in “[T]he District Court of the United States for the district and division within which such action is pending.” 28 U.S.C. § 1446(a). This matter is being removed from the District Court of Wagoner County, State of Oklahoma, a county within the confines of the Eastern District of Oklahoma. *See* 28 U.S.C. § 116(a).

19. Based on the above referenced statements and allegations removal of this matter to this Court is proper.

### **CONCLUSION**

This case is proper for removal to this Court based upon diversity of citizenship. Plaintiff is a citizen of Wagoner County, State of Oklahoma and all Defendants joined in this lawsuit have citizenship outside the state of Oklahoma. The amount of damages Plaintiff seeks exceeds the amount in controversy threshold. This Notice of Removal is timely filed. Therefore, all requirements for jurisdiction in this Court are satisfied.

Respectfully Submitted,

s/ Robert P. Coffey, Jr.  
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*Attorneys for Defendant Richers Trucking*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February 2019, I electronically transmitted the foregoing/attached document to the Clerk of Court using the ECF System for filing.

Rusty Smith, OBA #19575  
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s/ Robert P. Coffey, Jr.